

JUDGE MARKERU

David N. Mair [DM-8883]  
KAISER SAURBORN & MAIR, P.C.  
20 Exchange Place  
New York, New York 10005  
(212) 338-9100

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
TIMOTHY SKENNION,

Plaintiffs,

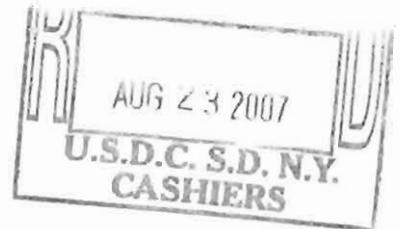
-against-

EMAIL DATA SOURCE, INC.,

Defendant.  
-----X

07 CV 7466

COMPLAINT



(Jury Trial Demanded)

Plaintiff, Timothy Skennion, by his attorneys, Kaiser Saurborn & Mair, P.C., as  
and for his complaint against the defendant, alleges as follows:

**PARTIES AND VENUE**

1. Plaintiff, Timothy Skennion, is a resident of the State of New Jersey.
2. Defendant, Email Data Source, Inc. ("Email Data Source"), is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business located in the State and County of New York.
3. The matter in controversy exceeds the sum or value of \$75,000 exclusive of interest and costs.
4. This Court has jurisdiction over this action Pursuant to 28 U.S.C. § 1332(a)(1).

5. Venue is properly laid in this District pursuant to 28 U.S.C. § 1391 because it is a District in which the defendant resides and is a District in which a substantial portion of the events giving rise to the claims asserted herein occurred.

6. This is an action to recover bonus payments, severance payments, business expenses and payment for unused vacation days that are owed to the plaintiff by the defendant as a result of the defendant's termination of plaintiff's employment without cause.

### **FACTS GIVING RISE TO THE CAUSES OF ACTION**

#### **A. Plaintiff's Employment at Email Data Source**

7. Pursuant to the terms of an offer letter dated February 8, 2006, and a letter of clarification dated March 7, 2006 (together hereafter referred to as the "Employment Contract"), Email Data Source hired Mr. Skennion as its Vice President of Sales.

8. On July 5, 2007, Email Data Source abruptly terminated Mr. Skennion's employment.

9. Prior to the termination of his employment, Mr. Skennion had not received any performance warnings, either written or verbal, nor had there been any criticism of any aspect of his job performance.

10. At the time Email Data Source terminated Mr. Skennion's employment, Email Data Source was experiencing severe cash-flow difficulties. Upon information and belief, the sole reason Email Data Source terminated Mr. Skennion's employment

was to implement a strategy of drastically cutting its costs until it could obtain additional financing from outside investors. Two other employees were terminated by Email Data Source for cost-saving reasons on the same day it terminated Mr. Skennion's employment.

**B. The Severance Payment Owed to Plaintiff**

11. The Employment Contract expressly provides that, in the event plaintiff's employment was terminated by defendant without cause, plaintiff was entitled to receive severance pay in an amount equal to five months of his then-current base salary.

12. Email Data Source had no grounds to terminate plaintiff's employment for cause and therefore the termination of his employment was without cause.

13. At the time his employment was terminated, Mr. Skennion's annual salary was \$150,000.

14. Pursuant to the terms of the Employment Contract, Email Data Source owes plaintiff a severance payment in the sum of \$62,500.

15. Despite due demand therefor, Email Data Source has failed and refused to pay any portion of the severance payment owed to plaintiff.

**C. The Bonus Payments Owed to Plaintiff**

16. The Employment Contract provides that Mr. Skennion was entitled to be paid quarterly bonuses in the amount of three percent of Email Data Source's gross

sales.

17. Upon information and belief, Email Data Source's gross sales for the first and second quarters of 2007 combined totaled at least \$500,000. Accordingly, Mr. Skennion was entitled to be paid bonuses of at least \$15,000 for this period.

18. Despite due demand therefor, Email Data Source has failed and refused to pay Mr. Skennion any portion of the bonuses owed for the first and second quarters of 2007.

**D. The Additional payments Owed to Plaintiff**

19. Despite due demand therefor, Email Data Source has failed and refused to pay Mr. Skennion the sum of \$5,618.59 it owes him for reimbursable business expenses for which he has provided Email Data Source full documentation in conformance with company policy.

20. Despite due demand therefor, Email Data Source has failed and refused to pay Mr. Skennion the sum of \$5,769 for ten accrued but unused vacation days for which he was entitled to be paid at the time of his termination.

**FIRST CAUSE OF ACTION**

21. Pursuant to Fed. R. Civ. P. 10(c), plaintiffs repeat and reallege each and every allegation contained in paragraphs "1" through "20" as if repeated and incorporated herein.

22. By failing and refusing to pay plaintiff the severance payment, bonuses,

expense reimbursements and unused vacation accruals set forth herein, Defendant has breached the terms of its employment agreement with plaintiff.

23. By reason thereof, plaintiff has been damaged in an amount to be determined at trial, but not less than \$88,900.

**WHEREFORE**, plaintiff hereby demands judgment against defendant as follows:

- (i) On the first cause of action, awarding plaintiff damages in an amount to be determined at trial;
- (ii) Awarding plaintiff the costs and disbursements of this action; and
- (iii) For such further relief as the Court deems just and proper.

**JURY TRIAL DEMAND**

Pursuant to Fed. R. Civ. P. 38, plaintiff hereby demands a trial by jury.

Dated: New York, New York  
August 21, 2007

KAISER SAURBORN & MAIR, P.C.  
Attorneys for plaintiffs

By: \_\_\_\_\_



David N. Mair [DM-8883]  
20 Exchange Place  
New York, New York 10017  
(212) 338-9100